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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,177	01/15/2004	Craig Negoescu	OWND002US0	4851
58417 7590 03/26/2007 HEINZ GRETHER PC 5810 TRADE CENTER DR. SUITE 300 AUSTIN, TX 78744			EXAMINER FLETCHER, MARLON T	
			ART UNIT	PAPER NUMBER
			2837	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/26/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/758,177

Applicant(s)

NEGOESCU ET AL.

Examiner

Marlon T. Fletcher

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, and 8-15, are rejected under 35 U.S.C. 103(a) as being unpatentable over Monte et al. (5,115,705).

Monte et al. disclose an electronic musical performance instrument (figure 1), comprising: a musical instrument input interface manipulatable by a human operator (figure 2) integral with; electronic circuitry for monitoring the input keys for input by the human operator (figures 22 and 23); and integral with a central processing unit running an operating system capable of running alternative sound synthesis software packages to generate sound signals from the input from the human to the musical instrument interface (abstract; column 16, lines 36-52; and column 19, lines 40-50).

Monte et al. disclose the musical instrument, wherein the central processing unit runs a computer operating system (column 16, lines 28-32).

Monte et al. disclose the musical instrument, wherein the boot code for the central processing unit is stored in nonvolatile solid state memory (column 20, lines 10-60).

Monte et al. disclose a microprocessor which provides the operating system for the musical instrument. Inherently a microprocessor can be use in a general purpose or

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personal computer. The microprocessor clearly is capable of running alternative sound synthesis software as discussed in column 16, lines 28-52 and column 24, lines 33-39, wherein the programmed (software) microprocessor controls the sound synthesis.

Monte et al. do not disclose the details of the operating system.

However, Official Notice is taken with respect to it being well known in the art to provide operating system for a musical instrument which could be a general purpose or personal computer for providing alternative sound synthesis.

Monte et al. disclose the musical instrument; the nonvolatile solid state memory is a RAM drive (column 20, lines 10-60).

Monte et al. disclose the musical instrument, wherein the modular surface includes a display (19).

Monte et al. disclose the musical instrument, wherein the modular surface includes mechanical user interfaces (figure 8).

Monte et al. disclose the musical instrument wherein one of the modular surfaces includes an array of keys (figures 8 and 9; and column 5, lines 10-12).

Monte et al. disclose the musical instrument, which includes a removable input and output module (figure 8).

Monte et al. do not disclose a flash memory nor a joystick.

However, Official Notice is taken with respect to it being known in the art to use flash memories, joysticks, sliders, and knobs, in electronic musical instruments.

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the well known teachings with Monte et al., because the teachings

allow more types of controls to be used with the apparatus.

It has been held that the term "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchinson, 69 USPQ 138.

3. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Monte et al. in view of Sitrick et al. (2003/0100965).

Monte et al. are discussed above. Monte et al. do not disclose a UPS.

However, Sitrick et al. disclose a UPS, which supplies power for the operation of the instrument when main power is lost.

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Sitrick et al. with Monte et al., because the teachings provide constant power to the instrument.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Monte et al. in view of Otyza (5,929,362).

Monte et al. disclose the musical instrument, wherein the interface includes at least two interface surfaces and at least one of the interface surfaces is modular and can be removed or swapped with another modular interface surface (figure 8, and column 5, lines 10-12). Monte et al. does not disclose that the modular interface can be swapped with a different interface configuration.

However, Oteyza discloses a musical instrument having an exchangeable modular, wherein modulars with different configuration can be used (column 3, lines 8-13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teachings of Oteyza with Monte et al., because the teachings allow a variation in units, thereby providing a variation of sounds to be provided therefrom.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Monte et al. in view of Gruenbaum.

Monte et al. are discussed above. Monte et al. do not disclose electronic racks. However, Official Notice taken with respect to Rack mounts being well known for mounting electronics including electronic musical instruments. Gruenbaum discloses a musical module that can be mounted on a rack mount (Page 5, paragraph 61).

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Gruenbaum with the teachings of Monte et al., because it provides a stationary, stable position for an electronic device.

Response to Arguments

Applicant's arguments filed 12/18/2006 have been fully considered but they are not persuasive. The applicant argues that Monte et al do not disclose an operating

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system capable of running alternative sound synthesis. As stated above in the rejection, the examiner disagrees. Monte et al. clearly provides a software driven system, wherein a programmed microprocessor (operating system) provides alternative sound synthesis. Further the term "capable of" merely the ability so perform. Clearly the microprocessor of Monte et al. meets this limitation. The limitation of the operating system being one of a general purpose or personal computer carries little weight, wherein clearly a microprocessor could be used in either of these two devices. Further, what constitutes a general purpose computer and how does that differ from a personal computer. The claims are broadly written and are rejected in the same manner, wherein the broad language is clearly and easily met by the prior art. There are no specifics provided that would define the claims over the prior art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T. Fletcher whose telephone number is 571-272-2063. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MTF
03/17/2007


Marlon Fletcher
Primary Examiner